

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 14, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP1867**

**Cir. Ct. No. 2012CV319**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**MICHAEL R. SZMANDA AND ASHLEY L. SZMANDA,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**AMERICAN FAMILY MUTUAL INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT,**

**ANTHEM INSURANCE COMPANIES, INC. AND AMERICAN FAMILY  
MUTUAL INSURANCE COMPANY,**

**SUBROGATED DEFENDANTS.**

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APPEAL from an order of the circuit court for Waukesha County:  
J. MAC DAVIS, Judge. *Affirmed.*

Before Brown, C.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. In March 2010, Michael Szmanda’s Mercedes-Benz was rear-ended by a vehicle insured by American Family Mutual Insurance Company.<sup>1</sup> Michael and Ashley Szmanda appeal from an order granting summary judgment to American Family on the question of coverage for injuries and property damage arising from the collision. We affirm.

¶2 The dispute in this appeal relates to the policies on two vehicles owned by the Szmandas and also insured by American Family: one policy insures the Mercedes Michael was driving when the collision occurred; the other policy insures a Volkswagen Jetta which was not involved in the collision. Each policy included underinsured motorist coverage (UIM). American Family refused to pay UIM benefits under either policy, the circuit court agreed with American Family’s decision, and the Szmandas appeal. We agree that UIM coverage was not available under the Szmandas’ policies.

¶3 We review the circuit court’s grant of summary judgment de novo, and we apply the same methodology employed by the circuit court. *Brownelli v. McCaughtry*, 182 Wis.2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). “We independently examine the record to determine whether any genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law.” *Streff v. Town of Delafield*, 190 Wis. 2d 348, 353, 526 N.W.2d 822 (Ct. App. 1994).

¶4 Neither party argues that disputed facts should have precluded summary judgment. It is undisputed that on September 16, 2009, when the

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<sup>1</sup> The \$100,000 policy limits of the policy insuring the offending vehicle were tendered.

Mercedes policy was issued, insureds could not stack coverages under multiple insurance policies. It is also undisputed that by the time the Volkswagen policy was issued, January 16, 2010, the law had changed, and insureds could stack coverages under multiple policies. *See Belding v. Demoulin*, 2014 WI 8, ¶¶19-21, 352 Wis. 2d 359, 843 N.W.2d 373 (discussion of history of changes to the stacking rules). It is further undisputed that American Family had no obligation to make an underinsured motorist coverage payment under the Mercedes policy because that policy's reducing clause took effect upon payment of the policy limits on the offending vehicle.

¶5 With these undisputed facts in mind, we turn to the Szmandas' contention that the stacking rules allow them to recover under the Volkswagen policy. WISCONSIN STAT. § 632.32(6)(d) (2009-10), which allows stacking, was the law when the Volkswagen policy was issued. The pertinent portion of the statute states:

No policy may provide that, regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, the limits for any uninsured motorist coverage or underinsured motorist coverage under the policy may not be added to the limits for similar coverage **applying** to other motor vehicles to determine the limit of insurance coverage available for bodily injury or death suffered by a person in any one accident, except that a policy may limit the number of motor vehicles for which the limits for coverage may be added to 3 vehicles.

(Emphasis added.)

¶6 We hold that the plain language of the statute means that in order to stack coverages, there must be another policy that applies to the claim. Here, however, it is undisputed that the Mercedes policy was subject to the anti-stacking and reducing clause rules. Therefore, under the above-cited statute, the Mercedes

policy did not apply to the claim, and therefore, there was no policy upon which the Volkswagen policy could be stacked.<sup>2</sup>

¶7 Having held that the Volkswagen policy could not be stacked on the Mercedes policy, we need not reach the parties' arguments relating to the drive-other-car exclusion in the Volkswagen policy.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

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<sup>2</sup> The Szmandas offer no citation for their contention that the Mercedes policy could be stacked even though the policy limits were unavailable by application of the reducing clause. We will not develop this argument for the Szmandas. See *Vesely v. Security First Nat'l Bank*, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593 (Ct. App. 1985).

